

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

Appellant, a 51-year-old security guard, filed a Form CA-2 claim for benefits on November 9, 2010, alleging that she developed a bilateral foot condition causally related to employment factors. OWCP accepted the claim for bilateral achilles tendinitis and bilateral plantar fibromatosis.

In an October 12, 2011 report, Dr. Andrew J. Palafox, Board-certified in orthopedic surgery, rated each of appellant's lower extremities as with a one percent permanent impairment, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*).

On June 7, 2012 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her right and left lower extremities.

In a report dated August 7, 2012, Dr. Ronald Blum, Board-certified in orthopedic surgery and an OWCP medical adviser, reviewed Dr. Palafox's October 12, 2011 report and found that appellant had a one percent impairment of the right lower extremity and a one percent impairment of the left lower extremity pursuant to the sixth edition of the A.M.A., *Guides*. He stated that, under Table 16-2, Foot and Ankle Regional Grid, Lower Extremity Impairments, at page 501 of the A.M.A., *Guides*,<sup>2</sup> the section pertaining to muscle/tendon impairments, appellant's achilles tendinitis yielded a class 1 rating for no significant objective abnormal findings of muscle or tendon injury at maximum medical improvement, which had a default score of one percent lower extremity impairment based on "palpatory findings and/or radiographic findings," for a mild problem. Using the Adjustment Grid, Functional History, at Table 16-6, page 516 of the A.M.A., *Guides*,<sup>3</sup> Dr. Blum found that appellant had a grade modifier of one for functional history, a grade modifier of two for physical examination pursuant to Table 16-7, Section 16.3b, page 517 of page 509 of the A.M.A., *Guides*, and no grade modifier for clinical studies pursuant to Section 16.3c and Table 16-8, page 519 of the A.M.A., *Guides*<sup>4</sup> since there were no clinical studies. He utilized this method to calculate a one percent impairment for each lower extremity, choosing to rate appellant's diagnosis-based impairment based on appellant's accepted bilateral achilles tendinitis condition.

By decision dated September 7, 2012, OWCP granted appellant a schedule award for a one percent permanent impairment of the left lower and her right lower extremity for the period February 27 to April 7, 2012, for a total of 5.76 weeks of compensation.

Appellant continued to submit medical documents to the record which did not evaluate her degree of permanent impairment.

On September 12, 2012 appellant requested reconsideration.

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<sup>2</sup> A.M.A., *Guides* 501.

<sup>3</sup> *Id.* at 516.

<sup>4</sup> *Id.* at 519.

By decision dated October 24, 2012, OWCP denied modification of the September 7, 2012 decision.

On October 30, 2012 appellant requested reconsideration.

By decision dated March 7, 2013, OWCP denied modification of the September 7, 2012 decision. Appellant again requested reconsideration on July 24, 2013.

In a report dated August 6, 2013, Dr. Michael M. Mrochek, a specialist in physical medicine and rehabilitation, found that appellant had a two percent right lower extremity impairment and a one percent left lower extremity impairment pursuant to the sixth edition of the A.M.A., *Guides*. After stating findings on examination and reviewing the medical history, he stated:

“According to page 501, [appellant] was class 1 grade C for the planter fascia, which is a one percent for both feet. For the right side, she does have a tendinitis of the Achilles tendon, which is a class 1, grade C injury as well a one percent [impairment], but I do not find any evidence of this on the left. With regard to the adjustment grid summary for functional history, she is a grade modifier 1 mild problem, which keeps her in the same class. Physical examination, grade modifier 1, mild problem; clinical studies are nearly confirmatory. Thus, she remains at one percent impairment for the left lower extremity for the plantar fasciitis, plus one percent, which is two percent for the right lower extremity for the achilles tendinitis and the plantar fasciitis.”

In a report dated October 3, 2013, Dr. Michael M. Katz, Board-certified in orthopedic surgery and an OWCP medical adviser, reviewed Dr. Mrochek’s report and concurred with his finding of a one percent impairment of the left lower extremity pursuant to the A.M.A., *Guides*, based solely on her accepted plantar fibromatosis condition, which did not provide a basis for an additional award. He stated, however, that Dr. Mrochek’s rating for the right lower extremity was not proper as it was based on two accepted conditions, plantar fibromatosis and achilles tendinitis. Dr. Katz asserted that this rating was not in conformance with the applicable protocols and tables set forth in the A.M.A., *Guides* in regard to a claimant with two accepted conditions which were covered by the same regional grid, Table 16-2. Dr. Blum advised that, pursuant to the A.M.A., *Guides* at page 497, “If a patient has two significant diagnoses ... the examiner should use the diagnosis with the highest causally related impairment rating for the impairment calculation.”<sup>5</sup> Based on this criteria, he found that appellant’s achilles tendinitis produced the higher rating at Table 16-2. Relying on the section pertaining to muscle/tendon impairments, Dr. Katz found that her achilles tendinitis yielded a class 1 rating for strain, which had a default score of one percent lower extremity impairment based on palpatory and/or findings, for a mild problem. Using the Adjustment Grid, Functional History, at Table 16-6, page 516 of the A.M.A., *Guides*,<sup>6</sup> he found that appellant had a grade modifier of one for functional history; a grade modifier of two for physical examination pursuant to Table 16-7,

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<sup>5</sup> *Id.* at 497.

<sup>6</sup> *Id.* at 516.

Section 16.3b, page 517 of page 509 of the A.M.A., *Guides*, and no grade modifier for clinical studies pursuant to Section 16.3c and Table 16-8, page 519 of the A.M.A., *Guides*.<sup>7</sup> Dr. Katz found that this calculation produced a class 1 impairment with a net adjustment of plus 1, from the default value C, which equaled a class 1, grade D, two percent impairment for the right lower extremity. He concluded that appellant now had a net additional award of one percent right lower extremity impairment based on subtracting the two percent award calculated above from the one percent impairment he was previously awarded. Dr. Katz reiterated that she was not entitled to an additional award for the left lower extremity.

By decision dated October 23, 2013, OWCP set aside the September 7, 2012 decision in part, finding based on Dr. Katz's October 3, 2013 report that appellant was entitled to a schedule award based on an additional one percent impairment for the right lower extremity.

By decision dated November 7, 2013, OWCP granted appellant a schedule award for an additional one percent permanent impairment of the right lower extremity for the period August 6 to 26, 2013, for a total of 2.88 weeks of compensation.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>8</sup> and its implementing regulations<sup>9</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>10</sup> The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to her employment.<sup>11</sup>

### **ANALYSIS**

In the instant case, OWCP accepted the conditions of bilateral achilles tendinitis and bilateral plantar fibromatosis. Based on the bilateral achilles tendinitis condition, it granted appellant a schedule award for a one percent impairment of the right and left lower extremities in its September 7, 2012 decision. Appellant subsequently sought an additional award and submitted Dr. Mrochek's August 6, 2013 report.

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<sup>7</sup> *Id.* at 519.

<sup>8</sup> 5 U.S.C. § 8107.

<sup>9</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides*. (6<sup>th</sup> ed. 2009).

<sup>10</sup> *Id.*

<sup>11</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

The Board notes that the A.M.A., *Guides* directs examiners to rate diagnosis-based impairments for the lower extremities pursuant to Chapter 16, which states at page 497, Section 16.2a that impairments are defined by class and grade.<sup>12</sup> In accordance with this section the examiner is instructed to utilize the net adjustment formula outlined at pages 521-22 of the A.M.A., *Guides*,<sup>13</sup> to obtain the proper impairment rating. In his October 3, 2013 report, Dr. Katz, OWCP medical adviser, reviewed the August 6, 2013 report from Dr. Mrochek. He agreed with Dr. Mrochek's rating of a one percent impairment for plantar fibromatosis in the left lower extremity; however, he found that Dr. Mrochek failed to relate his findings for the right lower extremity to the applicable tables and figures of the A.M.A., *Guides* and found that appellant had a two percent impairment of the right lower extremity for achilles tendinitis based on the Foot and Ankle Regional Grid, Lower Extremity Impairments at Table 16-2, page 501 of the A.M.A., *Guides*. Dr. Katz applied the section on muscle/tendon impairments and found that appellant had a class 1 rating for achilles tendinitis, a default score of one percent lower extremity impairment based on palpatory/and or radiographic findings. He then utilized the net adjustment formula, applying the grade modifiers of one for functional history and two for physical examination and no grade modifier for clinical studies. Dr. Katz compared these net adjustments and calculated the diagnosis for class 1 of plus two; for a grade D, two percent lower extremity impairment. Based on his report, OWCP determined that appellant had an additional one percent impairment of the right lower extremity, as he calculated this rating based on the applicable protocols and tables of the sixth edition of the A.M.A., *Guides*.

As noted above, Dr. Katz chose to rate his diagnosis-based impairment based on appellant's achilles tendinitis condition, rather than according an impairment rating based on the plantar fibromatosis condition. He based this rating on the fact that where a claim has two significant diagnoses, the examiner is instructed by the A.M.A., *Guides* to use the diagnosis with the highest causally related impairment rating for the impairment calculation. Pursuant to the criteria, Dr. Katz properly relied on the diagnosis-based method for rating appellant's accepted achilles tendinitis condition, which yielded the higher rating.<sup>14</sup> With regard to the left lower extremity, both Dr. Katz and Dr. Mrochek found that there was no basis for an award greater than the one percent impairment already awarded. Therefore, as OWCP medical adviser provided an impairment rating in accordance with its applicable protocols and tables, it properly granted a schedule award for an additional one percent right lower extremity impairment and denied an additional award for left lower extremity in its November 7, 2013 decision. The Board finds that appellant has not established that she has a greater impairment of her lower extremities.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

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<sup>12</sup> A.M.A., *Guides* 497.

<sup>13</sup> *Id.* at 521-22.

<sup>14</sup> The Board notes that a description of appellant's impairment must be obtained from appellant's physician, which must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. See *Peter C. Belkind*, 56 ECAB 580, 585 (2005).

**CONCLUSION**

The Board finds that appellant has no more than a two percent impairment to her right lower extremity and a one percent impairment to her left lower extremity.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 7, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 23, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board